APPENDIX A

Statutory Provisions Cited

18 U. S. C. §371

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1948, c. 645, 62 Stat. 701."

18 U. S. C. §2314

"Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting

"Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice

to defraud that person of money or property having a value of $5,000 or more; or

"Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

"Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security, or tax stamps, or any part thereof—

"Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country. As amended July 9, 1956, c. 519, 70 Stat. 507; Oct. 4, 1961, Pub. L. 87-371, 75 Stat. 802."

APPENDIX B

Opinions and Judgments Below

A. Opinion of the Court of Appeals

PER CURIAM.

We have carefully examined the record in these appeals with particular reference to the points raised by both appellants. We are satisfied that there was no substantial error in the trial with reference to either defendant.

The judgments of the district court against the defendants will be affirmed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

(Filed March 13, 1964)

Appendix B

B. Letter Opinion of the District Court

April 11, 1963*

Re: Cr. 224-62—United States of America vs.
Milton Parness

David M. Satz, Jr., Esq.,
United States Attorney
Newark 1, New Jersey

Attn.: Sanford M. Jaffe, Esq.
Assistant U. S. Attorney

S. M. Chris Franzblau, Esq.,
17 Academy Street,
Newark 2, New Jersey

Samuel H. Nelson, Esq.,
11 Commerce Street,
Newark 2, New Jersey

Gentlemen:

The named defendant was found guilty by a jury on February 7, 1963 of a violation of 18 U. S. C. 371. He has moved the Court for a new trial and at the conclusion of the argument on April 8, 1963, the Court reserved decision.

The motion of Milton Parness for a new trial must be denied.

The trial evidence disclosed that certain stock certificates of various corporations, bearing on their faces the names of their owners and unendorsed, were stolen from the homes of Bernard Hans in Forest Hills, New York and

* All sentences of letter opinion which appear in italics are underlined in original letter filed in Court.

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Fred W. Plate, Morristown, New Jersey, between May 26, and July 23, 1961. These securities were in the possession of the defendant Parness at a law office in New York City, where they were turned over to the co-defendant Grimmett by Parness in September or October of the same year. Parness was there accompanied by a person other than Hans, whom he introduced as Mr. Hains.

The co-defendant Grimmett was a citizen of Oklahoma and a controlling stockholder in an oil company, in financial straits. At this law office meeting, Grimmett informed Parness that he planned to borrow money on these securities, and would arrange to sell stock in his oil company to the bogus Mr. Hans. In connection with his disclosed plan to borrow on the securities Grimmett informed Parness that he would be able to secure a loan or loans thereon almost anywhere, and that he might do so at a bank in Oklahoma of which his brother was President. At the same meeting, Parness undertook to produce more securities the following day, of a character which would support a loan or loans up to one hundred percent of the face value of the additional securities.

On the day following the aforesaid meeting at the New York lawyer's office, Parness, Grimmett and the bogus Mr. Hans returned, and that afternoon, Parness reported to the attorney that the man referred to as Hans was having difficulty in procuring guarantees of endorsements upon the securities. The securities turned over by Parness were admitted in evidence and on their faces indicated that the transfer agents of the various corporations were located in various States, in addition to New York, and Parness

was therefore on notice that in order to effect a transfer of ownership of the stock on the books of the respective corporations, it would be necessary for at least some of the stock certificates to be transported interstate.

At this point in the testimony, the evidence was, in my opinion, amply sufficient to warrant the jury's concluding that Parness knew the securities to be stolen, and that he intended that cash should be raised upon the securities either by way of loan or sale. The jury could further infer that Parness expected or intended that he would be paid out of the moneys to be raised upon the securities, and undertook to produce additional securities, also stolen, for a similar purpose. The jury found, and in my opinion upon ample evidence, Grimmett caused the securities which he received at the conference at the lawyer's office to be transported between New York and New Jersey, and ultimately to Oklahoma City, Oklahoma. The jury was further justified in inferring from the evidence that if and when Parness produced the additional securities which he promised to obtain, they would be used for a purpose or purposes similar to that contemplated by Grimmett with respect to the securities which he actually received.

The foregoing evidence, in my opinion, justified the jury in concluding that Parnell (*sic.*) and Grimmett, together with the co-conspirators Favata and McLaren (*sic.*), conspired to cause securities which they knew to have been stolen, to be transported in interstate commerce in violation of 18 U. S. C. §2314. That conspiracy commenced on and with the occasion of the first meeting, at the office of the New York attorney and continued through January 5,

1962. Therefore, testimony of Favata, McLaren (*sic.*) and Gulihur (*sic.*) (the son-in-law of Grimmett) respecting, statements by and acts of Parness during the existence and in furtherance of the conspiracy, were properly admitted in evidence. From this evidence, the jury was warranted in concluding that Parness was a co-conspirator and participated in the furtherance of the conspiracy.

Parness saw fit to take the stand and testify in his own behalf. He testified that on October 11, 1961, he was introduced to Grimmett at the Savoy Hilton Hotel in New York City, who offered him American States Oil Corporation stock for a fifty percent loan. He subsequently met Grimmett at Orseck's law office, at which Bernard Hans brought the stock certificates which were admitted in evidence. Parness further testified that the deal which he was contemplating with Grimmett never worked out; and that he, Parness, went to the Orient on October 19, 1961 and returned to Anchorage, Alaska on October 31 of the same year. Parness admitted that he spoke to Gulihur (*sic.*) on January 2, 1962, who asked him to cash two cashiers checks for $25,000 each, and that he talked with Grimmett on the telephone on the same occasion, from whom he confirmed Gulihur's (*sic.*) request. He denies that Gulihur (*sic.*) gave him the $50,000 representing the proceeds of the checks, but admits that he met Gulihur (*sic.*) at a night club in New York City, while denying that he ever discussed transportation of securities between New York and New Jersey or elsewhere. The jury was justified in disbelieving the testimony given by Parness, and in inferring from

his incredibility that the evidence of his participation in the conspiracy thereby gained additional support.

The conspiracy charge against Parness is concededly based to a large extent, if not exclusively, upon circumstantial evidence. That evidence need not be inconsistent with every conclusion save that of guilt, provided it does establish a case from which the jury can find the defendant guilty beyond a reasonable doubt. Glasser v. United States, 1942, 315 U. S. 60; United States v. Seagraves, 3 Cir. 1959, 265 F. 2d 876; United States v. Monticello, 3 Cir. 1959, 264 F. 2d 47; United States v. Migliorino, 3 Cir. 1956, 238 F. 2d 7; and United States v. Georgia, 3 Cir. 1954, 210 F. 2d 45.

Submit order.

Very truly yours,

REYNIER J. WORTENDYKE, JR.
Judge, United States District Court

RJW,Jr/e
Original—Clerk

Appendix B

C. Judgment of the Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 14,503

UNITED STATES OF AMERICA

vs.

MILTON PARNESS and J. TOM GRIMMETT

MILTON PARNESS, *Appellant*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE ——— DISTRICT OF NEW JERSEY

Present:

McLAUGHLIN and FORMAN, *Circuit Judges*, and
LEAHY, *District Judge*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the ——— District of New Jersey and was argued by counsel.

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On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court filed April 30, 1963 in this case be, and the same is hereby affirmed.

Attest:

IDA O. CRESKOFF
Clerk

March 13, 1964

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D. Judgment of Conviction in the District Court

On this 26th day of April, 1963 came the attorney for the government and the defendant appeared in person and by counsel

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty of the offense of conspiracy to transport stolen securities in interstate commerce as charged in Count 1 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) years on Count 1.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Reynier J. Wortendyke, Jr.,
United States District Judge.